



**Response under 37 C.F.R. 1.116
- Expedited Examining Procedure -
Examining Group 1772**

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Robert P. Bourdelais, et al

HIGH MODULUS LABEL WITH
COMPLIANT CARRIER SHEET

Serial No. 10/828,779

Filed 21 April 2004

Group Art Unit: 1772

Examiner: Patricia L. Nordmeyer

I hereby certify that this correspondence is being deposited today with the United States Postal Service as first class mail in an envelope addressed to Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Valerie J. Richardson
Valerie J. Richardson

December 15, 2006
Date

Commissioner for Patents
P.O. Box 1450
Alexandria, VA. 22313-1450

Sir:

Pre-Appeal Brief Request for Review

Applicants request review of the final rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a Notice of Appeal. The review is requested based on the following Arguments.

ARGUMENTS

The listing of claims as presented in the Amendment mailed June 14, 2006, prior to final rejection, represents the current claim set.

Claims 1 - 12 and 14 - 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aoki et al. (USPN 6,562,429) in view of Reiger et al. (USPN 6,653,061). The Examiner states Aoki et al. discloses a label stock (Column 1, lines 30-33) comprising in order at least one pragmatic sheet (Figures 1- 3, #1), a pressure sensitive adhesive (Column 3, lines 29 - 31; Figure 1, #2) having a thickness between 5 and 100 micrometers, thereby overlapping the claimed range of 12 and 25 micrometers, (Column 7, lines 11 - 14) and a compliant carrier sheet (Figures 1- 3, #3), wherein the compliant carrier sheet comprises at least one voided layer (Column 2, lines 41 - 42 - wherein the cells of

the foam layer are equivalent to the voids) adjacent said adhesive (Figure 1, #2 and 3; Column 6, lines 40 - 43) as in claims 1, 4, 6 and 12. While acknowledging Aoki et al. fail to disclose a polyester polymer sheet having at least one voided layer, a release layer between said adhesive and said voided layer and the pragmatic sheet comprising a gelatin layer adjacent to said adhesive, the Examiner further states that Reiger et al. teach a polyester polymer sheet (Column 10, lines 10 - 13) having at least one voided layer (Column 10, lines 66 to Column 11, line 11), a release layer between said adhesive (Column 18, lines 19 - 27) and said voided layer and the pragmatic sheet comprising a gelatin layer adjacent to said adhesive (Column 7, lines 9 - 17) in a label stock (Column 1, lines 6 - 9) for the purpose of forming a label that is low in cost and has excellent optical properties (Column 10, line 66 to Column 11, line 1), and that it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided the polyester polymer sheet and gelatin layer in Aoki et al. in order to form a label that is low in cost and has excellent optical properties as taught by Reiger et al. This rejection is respectfully traversed, as the Examiner's interpretation of the teachings of Reiger et al. represents clear error.

Contrary to the Examiner's assertions, Reiger et al. does not teach a release layer between an adhesive and a voided layer at Column 18, lines 19 – 27. Rather, the release layer is between a peelable liner (see, e.g., col. 19, lines 40+) substrate and the adhesive layer of the photographic label. The Examiner's reference to Column 10, lines 10 – 13 as teaching a polyester polymer sheet having at least one voided layer represents further clear error, as col. 10, lines 10-13 refer to a preformed sheet used as an environmental protection layer over a label image (paragraph bridging cols. 9-10). While it is disclosed that such pre-formed sheet is preferably an oriented polymer, it is not suggested that it be a voided layer. To the contrary, voids would introduce opacity, which would obviously be avoided in a protective layer provided over an image, as otherwise the image would be blocked. Additionally, while the use of an adhesive is noted for adhering the pre-formed environmental protection layer to the label image, there is no teaching or suggestion to employ a release layer adjacent such environmental protection layer. Thus, the Examiner's interpretation of Reiger et al represents clear error.

To the extent voided layers are suggested in Reiger et al., such as described at Column 10, lines 66 to Column 11, line 11 as referenced by the Examiner, they are disclosed as part of the face stock substrate, not part of the environmental protection layer or part of the peelable liner. The voided layers disclosed in Reiger et al. are employed so as to provide opacity, whiteness, and image sharpness to the image (see, e.g., col. 11, lines 25-30). Thus, such layer is clearly intended to be retained with the label image, not discarded as part of the peelable liner. Thus, where a voided layer is employed as part of the face stock of the label, the label adhesive is between the voided layer and the peelable liner, and the release layer is between the adhesive and the peelable liner. Accordingly, the release layer employed in Reiger et al. is not between the adhesive and the voided layer as required by the present claimed invention, and the proposed combination of Reiger et al. with Aoki et al. would not overcome the basic acknowledged deficiencies of the Aoki et al reference with respect to the present claimed invention. A *prima facie* case of obviousness accordingly has clearly not been made, and reconsideration of this rejection is accordingly respectfully requested.

Claims 13, 18, 19 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aoki et al. (USPN 6,562,429) in view of Reiger et al. (USPN 6,653,061) as applied to claims 1 - 12 and 14 - 17 above, and further in view of Tsugawa et al. (USPN 5,928,987). The Examiner states it would have been obvious to one of ordinary skill in the art at the time the applicant's invention to provide a thermal dye receiver layer as taught by Tsugawa et al. in Aoki et al. modified by Reiger et al. to form a superior recording material. This rejection represents further clear error, as Tsugawa et al. does not overcome the basic deficiencies of the Aoki et al. and Reiger et al references with respect to the present claimed invention in that the pragmatic layer of Aoki et al. may not be separated as there is no release layer and pressure sensitive adhesive combination below the pragmatic layer, and in that Reiger et al. does not teach the relative positioning of the release layer, adhesive, and voided layer and as required in the present claimed invention. Tsugawa et al. does not disclose or suggest any modification of Aoki that would lead to the formation of a label product as is instantly claimed. Therefore, it is respectfully requested that this rejection be reconsidered and withdrawn.

Response to Arguments

In response to Applicant's argument in the Amendment mailed June 14, 2006 that Reiger et al. does not disclose the location of a release layer and a pressure sensitive adhesive above a cushioning layer and beneath the pragmatic sheet, the Examiner responds in the final rejection by stating Reiger et al. teach a polyester polymer sheet (Column 10, lines 10 - 13) having at least one voided layer (Column 10, lines 66 to Column 11, line 11), a release layer between said adhesive (Column 18, lines 19 - 27) and said voided layer and the pragmatic sheet comprising a gelatin layer adjacent to said adhesive (Column 7, lines 9 - 17) in a label stock (Column 1, lines 6 - 9). As explained above, however, to the extent Reiger et al. may suggest polyester polymeric sheets, voided layers, adhesives, and release layers, there simply is no teaching or suggestion to employ such layers in the specific order required by the present claimed invention so as to teach providing a release layer between the label adhesive and a voided layer. As taught by Applicants, such arrangement enables that the voided layer is peelable from the adhesive of the label face stock. To the contrary, Reiger teaches retaining the voided layer with the label image to impart opacity, whiteness, and image sharpness to the image. There is simply no teaching or suggestion in Reiger et al. to employ a voided layer in the releasable peelable liner to provide a compliant carrier sheet as taught in the present invention, and the asserted rejection accordingly represents clear error.

A proposed Amendment and Response Under 37 CFR 1.116 was filed November 15, 2006, in which Applicants essentially made the same arguments as presented above with respect to the impropriety of the final rejection, and also proposed an amendment to non-elected, withdrawn "method of using" claim 20 so that it would be commensurate with elected product claim 1, and requested rejoinder of the withdrawn method of using claims upon allowance of the product claims. The Examiner denied entry of such amendment on the alleged grounds that they would require a new search and/or further consideration, and also stated that Applicant's arguments of record are not found persuasive because they "rely on non-entered amendments". Such statement represents further clear error, as Applicant's arguments with respect to the impropriety of the final rejection are directed towards the features of product claim 1 itself, which has not been amended subsequent to the final rejection. It is additionally noted,

however, that the alleged justification for the refusal to enter the proposed amendment after final in any event also represents clear error, as the features that would be added to claim 20 to make such claim commensurate with claim 1 are already present in referenced claim 1, and thus would not require a new search and/or further consideration. It is expected that upon withdrawal of the final rejection based on the clear error explained above, the amendment submitted November 15, 2006 will be entered.

The final rejection is clearly in error for at least the reasons asserted above, and a prompt and favorable action in response to this request is earnestly solicited.

Respectfully submitted,



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If the Examiner is unable to reach the Applicant(s) Attorney at the telephone number provided, the Examiner is requested to communicate with Eastman Kodak Company Patent Operations at (585) 477-4656.